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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/606,787	06/28/2000	Bich Nguyen	2705-125	6324
20575	7590	03/11/2005	EXAMINER	
MARGER JOHNSON & MCCOLLOM, P.C. 1030 SW MORRISON STREET PORTLAND, OR 97205			HALIM, SAHERA	
			ART UNIT	PAPER NUMBER
			2157	

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/606,787

Applicant(s)

NGUYEN ET AL.

Examiner

Sahera Halim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

1. This action is responsive to the RCE filed on December 3, 2004. Claims 1-21 are presented for examination. Claims 1, 10, 14, 18, and 21 have been amended.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1, 10, 14, and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The examiner failed to find any support for the limitations of monitoring a bandwidth of the network **preceding each frame transmission**, monitored bandwidth **for each portion**, available **bandwidth for each frame** and monitoring bandwidth of the network **preceding the transmission of each portion**.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claim 3 recites the limitation "the transcoded data" in line 2 of the claim.

There is insufficient antecedent basis for this limitation in the claim. For

examination purposes it is read as "the transcoded frame".

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 1 –21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,421,720 to Fitzgerald (hereinafter Fitzgerald).

8. Reference to claim 1, Fitzgerald disclose a server comprising (abstract):

a transmit buffer for transmitting a plurality of frames of stored data to a network (col. 2, line 60-65, gateways 18 operate as a transmitting gateway, sending packets over the network to receiving gateway);

a network bandwidth monitor for monitoring a bandwidth of the network preceding each frame transmission (col. 4, line 53 – 65, packetizer 24 monitors the network for congestions); and

a transcoder for transcoding a frame into a reduced data content frame if the monitored bandwidth for the corresponding frame transmission is less than a first preset value, the transcoding capable of increasing a rate that each reduced

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data content frame is transmitted from the buffer over the network for the corresponding monitored bandwidth (col. 3, line 35 – 53).

Although the system disclosed by Fitzgerald teaches substantial features of the claimed invention (discussed above), it fails to teach a first preset value. However, Fitzgerald teaches when network congestion is high, less bandwidth is available. Accordingly, the packet payloads are transmitted with larger payloads to reduce the overhead in each packet (see abstract). Fitzgerald does not explicitly teach transcode a frame if the monitored bandwidth is less than a first preset value. What Fitzgerald discloses is to transcode when the bandwidth drops or heavy congestion is detected on the packet network (col. 4, line 36 – 40). Therefore, it would have been obvious to one of ordinary skill in relevant art at the time the invention was made that **Fitzgerald** implicitly teaches transcode when the bandwidth drops or heavy congestion is detected on the packet network, which is equivalent to the step transcode if the monitored bandwidth is less than a first preset value disclosed in the applicant's specification. A person of ordinary skill in the art would have recognized that **Fitzgerald** performs the same function in substantially the same way to reach substantially the same result.

9. As to claim 2, Fitzgerald teaches the server of claim 1, wherein the transcoder increases the rate that the frames are transmitted above a receiver play out rate for a period of time after the monitored bandwidth of the network rises above the first preset value (Fig. 5, col. 4, line 53 – col. 5, line 12).

10. Regarding claim 3, Fitzgerald does not teach a redundancy encoder for redundancy encoding the transcoded data if the monitored bandwidth is less than a second preset value. However, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to use a redundancy encoder to keep encoding the content till it is transferable over the network without losing any data in order to ensure that the end user is able to read the receiving data.

11. As to claim 4, Fitzgerald does not teach wherein the monitoring means includes a control unit for activating the redundancy encoder when the monitored bandwidth is less than the second preset value. However, Fitzgerald teaches monitoring the network congestions and adjusting the size of packet payloads based on the amount of congestions (col.1, line 48 – 65). It would have been obvious to a person having ordinary skill in the art at the time of the invention to was made to keep encoding the content till it is transferable over the network without losing any data in order to ensure that the end user is able to read the receiving data.

12. Regarding claim 5, Fitzgerald does not teach wherein the first preset value equals the second preset value. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to set the two values equal to each other in order to take all conditions into account.

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13. As per claims 6-21, they do not teach or further define over the limitations recited in the claims 1-5. Therefore, claims 6-21 are rejected for the similar reasons set forth in claims 1-5, supra.

### ***Response to Arguments***

14. Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S Pat. No.6,728,263 to Joy et al.

U.S. Pat. No. 6,490,250 to Hinchley et al.

U.S Pat. No. 6,243,761 to Mogul et al.

U.S Pat. No. 6,754,232 to Tasker

U.S Pat. No. 6,661,841 to Radha et al.

U.S Pat. No. 4,710,813 to Wallis et al.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sahera Halim whose telephone number is (703) 305-8054. The examiner can normally be reached on M-F from 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (703) 308-7562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sahera Halim  
Patent Examiner  
AU: 2157

March 4, 2005

  
ARIO ETIENNE  
SENIOR PATENT EXAMINER